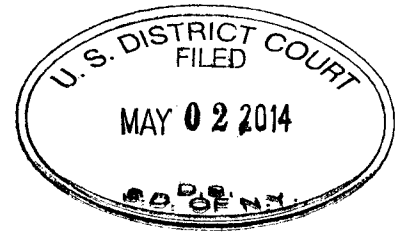


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DIF



X

UNITED STATES OF AMERICA

Respondent

Cr No. SI 06 Cr 911

Cv No. _____

-vs-.

RODERICK GUNN

Petitioner

X

SUPPLEMENTAL BRIEF IN SUPPORT OF

§ 2255 MEMORANDUM OF LAW


This supplement is submitted in support of an issue raised in Ground Three, subsection B, (page 34 of 2255 Memorandum), concerning the Rutledge claim on the §924(c) and §924(j). Accordingly, Mr. Gunn had argued that the court erred when it imposed a sentence on both the 924(c) and 924(j) offenses on the grounds that under Rutledge, the 924(c) is a lesser included offense of the 924(j). Although Gunn received concurrent sentences, 924(c) and 924(j) offenses, his conviction on Count Six must be vacated because, as the Supreme Court noted, (as in Gunn's case), the \$100 special assessment on each conviction (Count Six-924(c) and Count Seven-924(j)), amounts to unconstitutional multiple punishment

and the extra conviction hold the potential for adverse collateral consequences. *Rutledge v. United States*, 517 U.S. 292, 302, 134 L. Ed 2d 419 (1996). See also, *Ball v. United States*, 470 U.S. 856, 84 L. Ed 2d 740, "[a] convicted felon may properly be tried under both 18 U.S.C. § 922(h) and 18 U.S.C. § 1202(a)(1) for violations involving the same firearms, he may not be convicted of both offenses; and that if the defendant in such a case is found guilty on both counts, the district court should enter judgment on only one count. The remedy of ordering one of the sentences to be served concurrently with the other cannot be squared with Congress intent.

WHEREFORE, Count Six must be vacated, and remanded for resentencing, on the grounds that the imposition of the sentence for Count Six with the extra special assessment fee of \$100, is considered double punishment under *Rutledge v. United States*, 517 U.S. 292, 302, 134 L. Ed 2d 419 (1996).

Respectfully submitted

Dated: April 28, 2014

A handwritten signature in dark ink, appearing to read "R. Gunn", is written over a horizontal line.

Roderick Gunn

CERTIFICATE OF SERVICE

I, Roderick Gunn herby certify that I have served a true and correct copy of the following:

Supplemental Brief in support of 2255
Memorandum of Law

Which is deemed filed at the time it was delivered to prison authorities for forwarding, Houston v. Lack, 101 L. Ed. 2d 245 (1988), upon the defendant/defendants and or his attorney/attorneys of record, by placing same in a sealed, postage prepaid envelope addressed to:

U-S Attorney's Office
One Saint Andrew Plaza
New York, N.Y. 10007

and deposited same in the United States Mail at: U-S P. Atwater
P.O. Box 019001
Atwater CA 95301

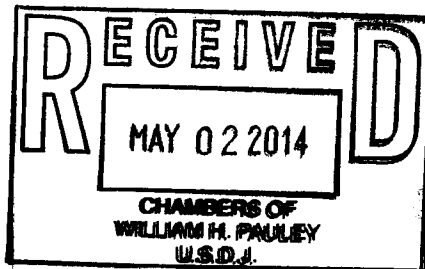
I declare, under penalty of perjury (Title 28 U.S.C. §1746), that the foregoing is true and correct.

Dated this 28th day of April, 20 14.

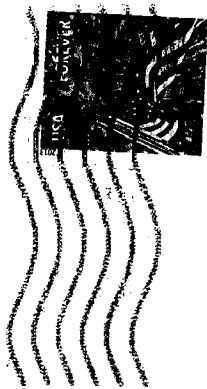
R. Gunn

⇨ 55254-054 ⇨

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29 APR 2014 PM 4 L

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